



W.P.No.18617 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.18617 of 2023
and
WMP.No.17859 of 2023

A.Mohamed Asiq

...Petitioner

Vs.

1. The Chairman,
TANGEDCO,
Tamil Nadu Electricity Board,
Anna Salai, Chennai-600 002.
2. The Assistant Executive Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Tamil Nadu Electricity Board,
O & M/Esplanade, CEDC/Central
Chennai- 600 001.
3. A.Mohamed Affan
4. Fathima Barira

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to quash the impugned letter No. Na.Ka.No.2.Se. Poo.EPoRa.ASP.Koo.Ree Case No.108.22 dated 15/03/2023 passed by the 2nd respondent.



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For Petitioner : Mr.J.Ferozkhan

For Respondent : Mr.L.Jai Venkatesh, for R1 & R2

ORDER

This Writ petition has been filed seeking quashment of the letter of the 2nd respondent dated 15/03/2023 bearing Na.Ka.No.2.Se.Poo.EpoRa. ASP.Koo.Ree Case No.108.22.

2. Mr.L.Jai Venkatesh, learned Standing counsel takes notice for the 1st and 2nd respondents. In view of the consent expressed by the Learned counsel appearing for either side, this petition is taken up for final disposal.

3. Since no adverse order is being passed against the 3rd and 4th respondents, notice to the 3rd and 4th respondents is dispensed with.

4. The case of the petitioner is that the petitioner purchased the subject property from one Shameem Ahamed and his son Mohamed, vide registered sale deed dated 12.11.2019 bearing Doc.No.1137/2019 for valid sale consideration and pursuant to which, the petitioner is carrying out his



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business by availing five commercial connections in the said property and the petitioner is paying the consumption charges to the respondent without any default. While so, upon receipt of the letter from the 2nd respondent, the petitioner came to know that, there was a theft of energy in the Electricity Service connection bearing No.104-020-55-Tariff V, which stands in the name of the said Shameem Ahamed and an extra levy payable for the energy stolen is worked out as Rs.3,60,141/-. In such circumstances, the 2nd respondent sent another letter dated 24.09.2022, directing the deceased Shameem Ahamed to pay the above said claim amount and the same was also served on the petitioner. Upon receipt of the said letter, the petitioner, vide reply dated 07.10.2022 informed the 2nd respondent that, the petitioner purchased the property in the year 2019 and the alleged service connection bearing No.104-020-55 is not available and not functioning in the subject property and he is not liable to pay the said amount. However, without considering the said reply, the 2nd respondent sent another letter dated 15.03.2023 to the deceased Shameem Ahamed and the same was served to the petitioner stating that, if the claim amount is not paid, the entire service connection in the subject property will be disconnected. Challenging the same, the petitioner has come up with this Writ petition.



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5. Learned counsel for the petitioner submitted that, the petitioner purchased the subject property on 12.11.2019, after confirming that, there is no encumbrance in the property. While so, the 2nd respondent issued the present impugned notice, calling upon the deceased to pay the claim amount/dues, which is not sustainable. Further the petitioner is an innocent purchaser and he is not liable to pay the penalty/claim amount, for the theft committed by his vendors, as he was not aware of the same. He further submitted that, the 2nd respondent issued the notices dated 24.09.2022 and 15.03.2023, demanding the claim amount/dues, which is after a lapse of about 19 years from the date of occurrence of alleged theft of electricity committed by the petitioner's vendor, which cannot be acceded to. Hence, he prayed for appropriate orders.

6. On the above said contentions, heard learned counsel appearing for the official respondents and perused the material documents placed on record.

7. Though very many grounds have been raised by the learned counsel on either side, the major issue involved in this Writ petition is whether the



petitioner being the subsequent purchaser is liable to pay the arrears of the electricity dues of the deceased Shameem, the previous owner of the subject property. However, the said issue is no longer *res integra* and the same was negated by the Hon'ble Apex Court as against the subsequent purchaser in the case of ***K.C.Ninan Vs. Kerala State Electricity Board and Ors.*** reported in ***MANU/SC/0604/2023***. For better appreciation, the relevant portion is extracted hereunder:-

“325. Since the decision of this Court in Isha Marbles (supra), the law as regards the liability of the subsequent owner for the payment of arrears of the electricity dues of the previous owner has been in flux. Petitions challenging the decisions of different Electric Utilities were filed as early as 2001. The orders of the High Courts had the effect of either directing the Electric Utilities to grant electricity connections to auction purchasers without insisting on payment of outstanding electricity dues, or directing the auction purchasers to comply with the conditions of supply or Electricity Supply Code, as the case may be. In some of the nineteen cases, this Court while granting leave passed interim orders. The legal issue of whether electricity dues constitute a charge on the property so far as the transferor and the transferee are concerned was referred to a larger bench by an order of this Court way back in 2006. The litigation in this batch of cases remained pending.

326. In the specific cases before us, where this Court has upheld the validity of the subordinate Regulations (Conditions of Supply or Electricity Supply



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Code, as the case may be) and has held the relevant Regulation to be applicable to the factual matrix, the auction purchasers would be liable to pay the outstanding dues of the previous consumer. On behalf of the Electric Utilities, claims have been made for interest on such arrears.

327. This Court must bear in mind the element of public interest in balancing the equities, particularly, at this stage where more than two decades have passed in litigation since the issue first arose. The 2003 Act was enacted to promote the development of the electricity industry, while protecting the interest of consumers. It must be kept in mind that many of the auction-purchasers are commercial entities who had purchased the premises for commercial ventures. Electricity being a necessity for operation of any commercial venture, denial of electricity connections to the auction#purchasers for an indefinite period of time resulted in loss of business. The delay in the court proceedings should not be to the further detriment of the litigants.

328. Taking all facts and circumstances into consideration, including the lapse of more than two decades since the appeals were filed before this Court and the equities arising in favour of one party or the other, we direct the Electric Utilities to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers.

I. Conclusions

329. The conclusions are summarised below:

- a. The duty to supply electricity Under Section 43 of the 2003 Act is not*



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absolute, and is subject to the such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity;

b. The duty to supply electricity Under Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities;

c. For an application to be considered as a 'reconnection', the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection;

d. A condition of supply enacted Under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;

e. The scope of the regulatory powers of the State Commission Under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;

f. The Electricity Supply Code providing for recoupment of electricity



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dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act;

g. The Rule making power contained Under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the regulatory commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge;

h. The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery Under Section 56 of the 2003 Act;

i. The implication of the expression "as is where is" basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities; and

j. In the exercise of the jurisdiction Under Article 142 of the Constitution, the Electric Utilities have been directed in the facts of cases before us to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers."

8. In view of the above ratio laid down by the Hon'ble Apex Court, the



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present issue in hand being squarely covered by the aforesaid decision, this Court is inclined to dismiss the present Writ petition by applying the above said decision of the Apex Court.

9. However, if the petitioner pays the demand amount of Rs.3,60,141/- within a period of four weeks from the date of receipt of a copy of this order, without any penalty and BPSC charges, the official respondents shall receive the same and close the aforesaid case, without insisting upon the penalty and BPSC Charges

10. With the above observations and directions, this Writ petition stands dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

26.06.2023

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NCC : Yes/ No

Speaking Order : Yes/ No

Index : Yes/ No

To

1. The Chairman,
TANGEDCO,
Tamil Nadu Electricity Board,
Anna Salai, Chennai-600 002.

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2. The Assistant Executive Engineer,
Tamil Nadu Generation and Distribution Corporation Limited,
Tamil Nadu Electricity Board,
O & M/Esplanade, CEDC/Central,
Chennai- 600 001.

M.DHANDAPANI., J.

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